

1 correct?

2 A. Yeah, they call those academic content
3 standards. Yes.

4 Q. I've heard it referred to as state
5 benchmark standards too; is that --

6 A. That's a part, yes, sir, that's a part of
7 it.

8 Q. And those academic content standards are
9 set forth in some document that you can review at the
10 school to know what it is that you're supposed to be
11 teaching to kids in the eighth grade science class.

12 A. That is correct.

13 Q. And does the school district or the
14 middle school play any role in establishing what
15 those academic content standards are?

16 A. They -- I guess they could if someone's
17 at that state level doing it.

18 Q. But those curriculum standards are from
19 on high, from the state level down to the schools.

20 A. Yeah. I'm thinking too deep in that
21 because I think there's some teaches that have done
22 that.

23 Q. Is there a director of curriculum in the
24 Mount Vernon City School District?

1 A. Yes, sir.

2 Q. Who is that person or who was that person
3 in the '07-'08 school year?

4 A. That would be Dr. Weston.

5 Q. She's a school districtwide director of
6 curriculum, correct?

7 A. To my understanding, yes.

8 Q. So she's not just over the middle school.

9 A. Yes. You're right. She's broader than
10 that.

11 Q. Do you review those academic content
12 standards on a periodic basis?

13 A. Yes.

14 Q. Okay. In what circumstance would you
15 review them?

16 A. Pretty regularly. I have them posted on
17 my door.

18 Q. Okay.

19 A. Yeah, so . . .

20 Q. And those were the specific state
21 academic content standards for eighth grade science.

22 A. Yes.

23 Q. Okay. How frequently do you think you
24 would have reviewed them?

1 A. Fairly frequently because that's the
2 basis of all my teaching.

3 Q. And do you receive any kind of training
4 on the academic standards?

5 A. Yeah, I -- yes. Yes.

6 Q. Does the school district do that on a
7 periodic basis?

8 A. I mean, once a year or just --

9 Q. Once a year, twice a year or whatever.

10 A. Yeah, there's definitely some training
11 throughout the year type thing. It's discussed
12 pretty regularly.

13 Q. Okay. In teacher meetings? In teacher
14 administration meetings?

15 A. Yes.

16 Q. And I take it that if a content standard
17 is changed, teachers would receive some kind of
18 instruction on what that change was and what that
19 change would require?

20 A. Yes.

21 Q. Now, in your class is it your
22 understanding that -- obviously, you're supposed to
23 teach to those academic content standards, correct?

24 A. That would be correct, sir.

204

1 Q. And you can use information outside those
2 content standards within certain parameters in order
3 to teach those content standards; is that fair?

4 A. Outside --

5 THE WITNESS: Repeat that one for me, can
6 you please.

7 (Record read.)

8 A. Information outside. Yes.

9 Q. Okay. Do you also receive training from
10 the school or the school district on the teaching of
11 religion in the classroom?

12 A. No.

13 Q. There was never any instruction on what
14 you can and can not do in terms of teaching religion
15 in the classroom from your school or the school
16 district.

17 A. There was training this year, but I
18 wasn't there. But I've never seen training like
19 that, no.

20 Q. Okay. When you were getting your degree
21 back at Ohio University, did you ever take coursework
22 on that topic?

23 A. I don't remember, sir.

24 Q. You did have that one course at Mount

1 Vernon Nazarene, Religion in the Classroom, correct?

2 A. That is correct.

3 Q. In the teacher faculty meetings did the
4 subject, in your 21 years at Mount Vernon City
5 Schools, did the subject of religion in the classroom
6 ever come up?

7 A. Repeat that. I'm trying -- where was the
8 location of that again?

9 (Record read.)

10 A. I would guess so. I can't pinpoint a
11 time. I'm sitting here running back -- I guess so.

12 Q. I understand it's a long time.

13 A. Yeah.

14 Q. But do you recall any specific topics
15 that were discussed that relate to religion in the
16 classroom during the teacher administration faculty
17 meetings?

18 A. I don't remember, sir.

19 Q. I take it there's a specific textbook
20 that you are supposed to use in teaching science in
21 eighth grade in Mount Vernon City Schools.

22 A. Put an S on that; books, yes.

23 Q. The book changes from year to year
24 perhaps?

1 A. It could, but there's books. More than
2 one.

3 Q. So the students don't have just one
4 textbook that they use during the year.

5 A. That's correct.

6 Q. They have multiple books.

7 A. Yes.

8 Q. Okay. I take it you're familiar with the
9 academic content -- well, let me back up here a
10 second.

11 Does the district have a curriculum that
12 is separate from what the academic content standards
13 are?

14 A. I'd say no. They adopted 2004 Ohio --
15 the academic content standards.

16 Q. And so the Mount Vernon curriculum, the
17 district curriculum, is based on those academic
18 content standards.

19 A. That would be correct, yes.

20 Q. And does the Mount Vernon City School
21 District add to those content standards as part of
22 their curriculum? In other words, is the curriculum
23 broader than what the academic content standards are?

24 A. I'll say, to the best of my knowledge,

1 no.

2 Q. Okay.

3 A. Because I don't see what comes from the
4 state. Maybe I do. What they receive from the state
5 and what they give us, I don't know if they add, take
6 away or anything to it. I think what we get is
7 directly from the state.

8 Q. Okay. The curriculum for eighth grade
9 science includes sections or whatever you want to
10 call them on life sciences.

11 A. That's correct.

12 Q. And what's your understanding of that
13 curriculum? What does it entail? What are you
14 supposed to teach when you get to that life sciences
15 unit?

16 A. You're going to have to refresh my memory
17 on that one, sir. I would have to -- to be accurate
18 I would have to --

19 Q. Well, just based on your recollection as
20 you sit here today. I mean, you were the teacher
21 there.

22 A. Yes, I know, but it's been going on
23 almost two years now, sir.

24 Q. You don't remember what the components of

1 the life sciences section were?

2 A. Yeah, I can -- heredity. Evolution. I
3 want to say "cells," but I'm not positive. Put a
4 question mark beside it. I'm not sure if cells are
5 in it. I'll stop with that.

6 Q. Okay.

7 A. I do know those two.

8 Q. That's what you recall.

9 A. Evolution and heredity, yes.

10 Q. That curriculum does not include the
11 teaching of creationism, correct?

12 A. That is correct.

13 Q. And it does not include, that curriculum
14 does not include the teaching of intelligent design.

15 A. That is correct.

16 Q. Okay. And if you were teaching
17 creationism, that would be in violation of those
18 academic content standards and the curriculum,
19 correct?

20 A. That would be correct, sir.

21 Q. And if you were teaching intelligent
22 design, that, likewise, would be a violation of the
23 academic content standards and the curriculum,
24 correct?

1 A. That would be correct.

2 Q. The approved science curriculum for
3 eighth grade does not include critical analysis of
4 evolution, does it?

5 A. Can she repeat that?

6 Q. Yeah.

7 (Record read.)

8 A. It did.

9 Q. When did it?

10 A. I'm trying to give you a date. 2006 I
11 want to say.

12 Q. So up until 2006 it included that?

13 A. Yes.

14 Q. Then what happened in 2006 that critical
15 analysis of evolution was removed from the
16 curriculum?

17 A. A memo came out.

18 Q. From the school district?

19 A. Yes.

20 Q. A memo to whom?

21 A. Science teachers.

22 Q. To all science teachers or to you
23 specifically?

24 A. I don't remember if it said "all." I

210

1 don't recall --

2 Q. Okay. But --

3 A. -- what the memo said, sir.

4 Q. All right. I guess I didn't ask that
5 question particularly well. It was a memo to all
6 students and not a memo directed only to you.

7 A. I don't remember, sir.

8 MR. DESCHLER: You said "all students."

9 MR. MANSFIELD: I'm sorry.

10 Q. All science teachers and not directed
11 directly to just you; is that correct or not?

12 A. Start over on that one, sir.

13 Q. That memo, was that memo directed to all
14 science teachers in the district?

15 A. I'm not sure, sir.

16 Q. Do you recall what the heading of it
17 said? Did it say "Dear Mr. Freshwater"? You don't
18 recall?

19 A. I don't recall the memo, sir.

20 Q. Okay. You would agree with me that when
21 you teach kids science in eighth grade, you're
22 building on what they learned in previous years,
23 correct?

24 A. Yes.

1 Q. And, likewise, teachers that teach the
2 kids science after eighth grade, those teachers
3 subsequent to you, they're building on what you had
4 taught the kids and what teachers prior to you had
5 taught the kids as well, too; is that fair?

6 A. That would be fair.

7 Q. Okay. If you had failed to teach
8 evolution properly to your kids, then those high
9 school teachers, those subsequent teachers would then
10 have to teach that to the kids, wouldn't they?

11 A. Yeah, if I -- whatever it may be, if I
12 failed to teach it, they would have to -- somewhere
13 along there they will have to get it.

14 Q. Right. So if you as a teacher failed to
15 teach something, then there would need to be remedial
16 training, I'll call it, in subsequent years to get
17 the kids up to speed on those particular topic areas.

18 A. Yes. I would say yes, I guess.

19 Q. And so if a student was in your class and
20 failed to learn about evolution, that student, when
21 they got to ninth grade, would be behind their peers
22 in terms of what they had learned about evolution;
23 would you agree with that?

24 A. Yes.

212

1 Q. Okay. And that would place those kids at
2 a disadvantage, wouldn't it?

3 A. Yes. Unless they learned it at home or
4 some other place, yeah.

5 Q. I think in some of your previous
6 testimony you talked about using the word "here" in
7 your science classroom. Do you recall that?

8 A. Yes.

9 Q. And tell me why you chose to use the word
10 "here" in the classroom and tell me what you meant by
11 that.

12 A. As an example of concrete and abstract
13 thinking.

14 Q. What do you mean by that?

15 A. Eighth graders are more of a concrete
16 thinker. It's an opportunity to work on the
17 abstract.

18 Q. Do you recall using it while teaching
19 radiometric dating?

20 A. That is part of the AC -- academic
21 content -- standards, so the kids might have used it
22 then.

23 Q. And in that particular context when you
24 were teaching kids about radiometric dating, if a kid

1 came across a date, for example, that a fossil is
2 200 million years old, the kids would state "here" in
3 that instance, wouldn't they, and "here" would mean
4 in that instance that it's being stated as a fact but
5 it shouldn't be stated as fact; is that correct?

6 A. It's a -- it's an inference. An
7 inference would be getting an idea from your, I'm
8 just trying to think of how -- getting the idea from
9 your observations and your -- with an inference you
10 have to -- with evolution you have to extrapolate the
11 past, so with this example it's -- I'm sorry, I'm
12 explaining some things so you can -- I've lost gauge
13 of the question, sir.

14 Q. So in that example we talked about, the
15 radiometric dating example, a date would come up, for
16 example, that a fossil is, say, 200 million years
17 old, and in that instance the kids would say "here"
18 because the textbook was stating that as a fact,
19 stating the age of that dinosaur fossil -- or that
20 fossil as a fact when it shouldn't necessarily be so.
21 Is that a fair characterization?

22 A. It's -- it's an inference where they're
23 extrapolating backwards and we don't know -- I guess
24 you've got --

1 Q. Let me ask you this --

2 A. -- you have modern -- go ahead, sir.

3 Q. Let me ask you this way: Is it fair to
4 say that you told the kids to use the word "here"
5 when they saw things in the textbook or things that
6 came up somewhere that were stated as a fact but that
7 might not necessarily be a real fact?

8 A. Yeah, because that would be a science
9 fact, okay, where we don't know -- I mean, like the
10 difference between, you know, like a moderate -- you
11 know I am 53 years old. You know when I was born,
12 and you know today. So that's a concrete fact. This
13 one here you don't know for sure, they extrapolate it
14 back on this. So we don't know, so it's not a
15 concrete; would be more abstract.

16 Q. With the 200 million-year-old fossil
17 example, what you mean by telling the kids to use
18 "here" in that context is that we can't be certain
19 that that's a fact, correct, because we have to
20 extrapolate or we have to do something to get back to
21 that date?

22 A. I'm just kind of confused. Your -- 11
23 years ago, about 11 years ago I had a -- I'm trying
24 to recall back something. I've got to apologize

215

1 here. A student come in refuting evolution, okay,
2 and it happens often, or I shouldn't say often,
3 regularly, a few students come in and refute
4 evolution. So she brought some -- I'm trying to
5 recall the name. I can't recall the name.

6 Anyway, she was refuting -- she had some
7 information, I remember I put some things on a, I
8 used it, and it has come up, it's the woodpecker and
9 the giraffe worksheets that came in refuting
10 evolution, and during that time period working
11 with -- it dawned on me that students are having a
12 hard time with abstract/concrete.

13 So during that time period and with
14 disruptions in class and so forth, okay, because it
15 does conjure up disruptions, that we were talking
16 about this and looking at some good -- looking at
17 good science, bad science, that type of thing, you
18 know, things that -- and a student in the class said,
19 "Hey, look here. There," some of those types of
20 words. And it was a date that was, similar to this
21 situation, that was not a concrete date, it was a
22 science date, and they said "here," so I just kind of
23 used that.

24 And it was very successful and cut down

1 disruptions, and I found it to be very effective. My
2 OAT scores, they show it. They did very well in
3 their OATs, in life science especially.

4 Q. So I think what you're telling me is --

5 A. So, I've got -- go ahead. I apologize,
6 you have some -- I'm not sure if I answered your
7 question on that.

8 Q. In other words, "here," you having the
9 students use the word "here" is a shorthand way of
10 them saying that a scientific theory just cannot be
11 100 percent proven correct; is that fair?

12 A. The definition of theory is an
13 established fact that scientists believe to be true,
14 so that -- with theory --

15 Q. Well, let me ask it this way: There are
16 scientific facts that come up in class from time to
17 time, correct?

18 A. Yes. Sure.

19 Q. For example, the age of a fossil,
20 correct?

21 A. Okay.

22 Q. Okay. And the textbook may say that that
23 fossil is 200 million years old, for example, all
24 right?

1 A. Okay.

2 Q. And the students, it was your practice to
3 have the students say "here" in that instance because
4 that is a scientific fact that really can't be
5 proven; is that correct?

6 A. Not saying it's right or wrong, it's not
7 able to -- they don't have a beginning or an end or
8 whatever on that date, it's extrapolation --
9 extrapolated.

10 Q. So by using the word "here" you're saying
11 that date may be right or it may be wrong.

12 A. Yes.

13 Q. All right.

14 A. Yes. That's good.

15 Q. Why do you think certain scientific
16 theories, radiometric dating for example that we just
17 talked about, why do you think that those theories
18 shouldn't be stated as a fact?

19 A. They very well -- it's scientific. To
20 the best of the scientist's knowledge they are a
21 fact, so what they're stating there, they're the
22 best -- with all the backed up scientific stuff
23 behind it they're doing the best to say "Yes, this is
24 a fact," but it's not a concrete.

218

1 Q. Fact. Okay. So radiometric dating is a
2 good one to use because, you tell me your opinion, do
3 you think radiometric dating is accurate or not?

4 A. With my --

5 Q. Your personal belief.

6 A. I don't -- repeat that again.

7 Q. Do you believe personally that
8 radiometric dating is accurate or not?

9 A. Why wouldn't I think that? I mean,
10 it's --

11 Q. I'm just asking you. What's your
12 personal belief? Do you think it's accurate or not?

13 A. Yes.

14 Q. Okay.

15 A. To the best of scientists, you know, with
16 the scientific evidence we have out there, yes.

17 Q. Okay. Do you believe in evolution?

18 A. Oh, yes.

19 Q. Do you believe in creationism?

20 A. Yes.

21 Q. And you believe in intelligent design?

22 A. Define that for me, sir.

23 Q. Well, your definition of intelligent
24 design. You understand what intelligent design is,

1 don't you?

2 A. I don't feel comfortable in --

3 Q. I'm not asking you whether you taught it
4 in your class or not. I'm simply asking personally
5 do you believe in intelligent design.

6 A. I don't feel comfortable even going there
7 with that one, sir.

8 Q. And why not?

9 A. I just don't have a thought on that. I
10 don't have an opinion on that.

11 Q. Have you read anything about intelligent
12 design?

13 A. Sure, I read some things.

14 Q. And, in fact, you proposed to the school
15 district in 2003 that you wanted to teach intelligent
16 design in the classroom.

17 A. Absolutely not.

18 Q. I'm talking about that proposal that you
19 made.

20 A. Absolutely not.

21 Q. Okay. So intelligent design wasn't part
22 of that proposal.

23 A. No. Not at all.

24 Q. You're aware of the theory of intelligent

1 design.

2 A. Do I know it exists out there?

3 Q. Yeah.

4 A. Sure.

5 Q. Okay. And you've read articles about it.

6 A. Yeah, I've read some articles. Yes.

7 Q. You tell me what your understanding of
8 intelligent design is.

9 A. I think I've answered that. I don't have
10 an opinion on that right now, sir.

11 Q. I'm not asking your opinion about it.
12 I'm asking you for what your understanding of
13 intelligent design is.

14 A. You're going to have to give me some
15 materials to look at then, sir.

16 Q. I'm just asking you based on your reading
17 these articles and your understanding of the term
18 "intelligent design," you tell me what you understand
19 it to be.

20 A. I have no thoughts, I have no opinion on
21 that right now. You'd have to give me some
22 information on this, sir.

23 Q. What does "intelligent design" mean to
24 you?

1 A. I have no opinion on that.

2 Q. You don't understand intelligent design
3 to be God's hand somehow in changing things in life
4 or creating things?

5 A. I'm aware some people -- intelligent
6 design doesn't have anything to do with God.

7 Q. What does it have to do with then?

8 A. I don't have an opinion.

9 Q. What's your understanding of creationism?

10 A. My understanding of creationism would
11 be -- I guess, first of all, I'm not a theologian.
12 I'm trying to figure out the direction of this
13 question.

14 Q. I just want to know what your
15 understanding of creationism is.

16 A. I'm just trying to figure out why you
17 want to know my faith belief.

18 Q. I'm allowed to ask those questions today.

19 A. Okay.

20 Q. Just like your counsel was asking
21 Mrs. Doe those same questions the other day, I'm
22 entitled to ask those questions.

23 A. Thank you, sir.

24 Creationism. Part of my faith.

222

1 Q. And what do you understand that to be?

2 A. It's part of my faith.

3 Q. I understand that, sir. But what do you
4 understand it to be? What is creationism, in your
5 mind?

6 A. That there would be a creation --
7 creator.

8 Q. Okay. That creator is whom?

9 A. God.

10 Q. And God did what by way of creationism?

11 A. I guess I'm real confused on why you're
12 asking me these questions, sir, that's why such long
13 pauses here, because I don't know what this has to do
14 with --

15 MR. HAMILTON: Do you believe in the
16 Bible or not?

17 THE WITNESS: Yes.

18 MR. HAMILTON: I mean, that's what I
19 think he's trying to get to.

20 THE WITNESS: Yes. Yes.

21 Q. Okay. If you were to explain creationism
22 to one of your kids, how would you explain it to
23 them?

24 A. You're separating students from kids?

1 Q. Yes, your kids. These questions are
2 talking about --

3 A. My personal.

4 Q. -- your personal beliefs. I'm not asking
5 about your --

6 A. Yeah, that's why I'm trying to -- I guess
7 I don't have an understanding why you're digging in
8 my personal beliefs.

9 MR. HAMILTON: He can dig into your
10 personal beliefs.

11 THE WITNESS: Can he?

12 MR. HAMILTON: Absolutely. So just
13 answer his questions. Do you believe in the Bible or
14 not? I think that's what he's trying to get to. If
15 you're confused with what he's asking you -- if
16 you've taught creationism in the classroom, that's
17 not what he's asking you. He's simply asking you to
18 explain creationism.

19 A. Okay. Go ahead, sir.

20 Q. You tell me in your words what
21 creationism is.

22 A. That there's a creator and that there's a
23 God that created it.

24 Q. Okay. And God created the world, is that

1 correct, under that view?

2 A. That would be correct, sir.

3 Q. And God created life and God created man;
4 is that right?

5 A. That would be correct, sir.

6 Q. And that's all set forth in the Bible
7 like Mr. Hamilton was just talking about.

8 A. That would be correct, sir.

9 Q. And that is your belief.

10 A. That would be correct, sir.

11 Q. Okay. The same with intelligent design.
12 I'm not asking you whether you taught it in class,
13 I'm not going there, I just want to know what your
14 understanding of intelligent design is.

15 A. You would have to give me some -- I would
16 have to refresh my memory on it, sir.

17 Q. Okay.

18 MR. MANSFIELD: Would you mark this.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. Mr. Freshwater, let me hand you what
21 we've marked as Deposition Exhibit No. 9. If you
22 could take a look at that for a second, please.

23 A. Can I look at this? It's been awhile
24 since I looked at this.

1 Q. Yeah, go right ahead.

2 A. I apologize.

3 Q. That's all right. Have you had an
4 opportunity to review --

5 A. Yeah, I have looked through it. Yes.

6 Q. -- Exhibit 9? The last two pages of
7 Exhibit 9, that's the proposal we were talking about
8 a little while ago that you had submitted to the
9 Mount Vernon school board in 2003; is that correct?

10 A. That is correct, sir.

11 Q. Okay. And I understand that the first
12 page of this Exhibit 9 was not drafted by you.
13 Correct?

14 A. Yes, it was definitely not drafted by me.

15 Q. But the last two pages were what you
16 created, correct?

17 A. That is correct.

18 Q. And you put this together as part of a
19 proposal, like it says at the top, to teach Darwinian
20 evolution objectively.

21 A. That is correct.

22 Q. Did you draft this by yourself, this
23 proposal?

24 A. Draft it by myself?

1 Q. Right.

2 A. Restate -- can you restate that a
3 different way, sir?

4 Q. Well, did you create this on your
5 computer at home?

6 A. To my knowledge, yes.

7 Q. And were you the one who actually typed
8 it into the computer?

9 A. That would be correct, yes.

10 Q. And so you're the one who drafted this
11 proposal.

12 A. Drafted, yes.

13 Q. Okay.

14 A. Gotcha.

15 Q. Did you receive any assistance from
16 anyone as part of your drafting of this proposal?

17 A. Yes.

18 Q. Who assisted you in drafting the
19 proposal?

20 A. My wife and a lady, Evy. Evy Oxenford.

21 Q. Evy Oxenford?

22 A. Evy Oxenford, yes.

23 Q. And who is she?

24 A. A friend. Friend of the family.

1 Q. Why was Evy Oxenford assisting you in
2 drafting this proposal?

3 A. I don't remember exactly why, sir.

4 Q. Did she have opinions about teaching
5 Darwinian evolution objectively?

6 A. No. I think it was more contextually,
7 language. From what I remember, sir, I think it was
8 more that, the content and the spelling, grammar,
9 just the layout.

10 Q. Did she review the content?

11 A. I would say yes to that.

12 Q. And she helped you put together the
13 content.

14 A. Yes.

15 Q. And she also helped you grammatically and
16 punctuationwise --

17 A. Yes.

18 Q. -- in putting it together.

19 A. Yes.

20 Q. Okay. Is Ms. Oxenford a teacher?

21 A. She's a nurse practitioner.

22 Q. And back in '03 when you drafted this,
23 she was a nurse practitioner then?

24 A. No.

1 Q. What was she doing then?

2 A. She was -- I think her title was
3 teacher's aide I think it was then.

4 Q. So she was in the school district with
5 you?

6 A. Yes. She was in the Mount Vernon school
7 system.

8 Q. Okay. Did she assist you?

9 A. No.

10 Q. What did she do as a teacher's aide?

11 A. It was more of a one-on-one or
12 two-on-one, three-on-one type situation.

13 Q. Helping students out in the classroom?

14 A. Yes.

15 Q. Okay.

16 A. But not mine. It was not my students,
17 though.

18 Q. She never helped out in your class.

19 A. It's been a long time. From what I
20 remember, no.

21 Q. Okay. Does she attend your church?

22 A. No, sir.

23 Q. Her husband's a science teacher in the
24 Mount Vernon schools, correct?

1 A. That is not correct.

2 Q. Was he a science teacher or was he a
3 teacher in the schools?

4 A. No, sir.

5 Q. He was not. Who is her husband?

6 A. She's divorced. Said she's divorced.

7 Q. Was she divorced back in 2003 when you
8 put this proposal together?

9 A. No.

10 Q. So she was married at that time.

11 A. To my best understanding, yes.

12 Q. And was her husband's name Bill Oxenford?

13 A. No, sir.

14 Q. What was her husband's name?

15 A. I don't know the first name.

16 Q. And he wasn't a teacher in the Mount
17 Vernon schools.

18 A. No.

19 Q. Did anybody else help you in drafting
20 this proposal that's in Exhibit 9 aside from Evy
21 Oxenford?

22 A. Anybody else help me draft it? You mean
23 helped me --

24 Q. Let me ask this way, did anybody give you

230

1 suggestions for the contents of what should go into
2 the proposal?

3 A. Other than those?

4 Q. Other than --

5 A. No.

6 Q. Did Dave Daubemire help you put this
7 together?

8 A. No.

9 Q. Did anyone within your church help you to
10 put this together?

11 A. No.

12 Q. Any other teachers in the Mount Vernon
13 City Schools that helped you put this together?

14 A. No.

15 Q. So it was really you with a little bit of
16 assistance from Ms. Oxenford.

17 A. Uh-huh.

18 Q. Is that right?

19 A. That would be correct, sir.

20 Q. Okay. In putting together this proposal
21 you wanted the Mount Vernon City Schools to change
22 their curriculum with respect to the life sciences a
23 bit, correct?

24 A. You said change the curriculum?

1 Q. Well, add to. That's a fairer -- you
2 wanted them to add --

3 A. Yeah, I would say "add" would be a better
4 word. Yes.

5 Q. And what you wanted the curriculum to do
6 by way of this proposal was to allow teachers and
7 students to critically examine the evidence both for
8 and against evolution, correct?

9 A. Just a more robust evolution teaching.

10 Q. Okay. But like it says in here, in the
11 proposal -- do you see that paragraph that says
12 "Proposal"?

13 A. I'm sorry. Point that out to me, sir.

14 Q. Second paragraph says "Proposal"; do you
15 see that?

16 A. Yes, sir.

17 Q. In that first sentence it says, "Add a
18 policy statement" -- I'm skipping some word -- "that
19 allows teachers/students to critically examine the
20 evidence both for and against evolution."

21 A. Yeah.

22 Q. Do you see that?

23 A. Yeah. "Robust" would fit there also.

24 Teaching a broader -- teaching more evolution.

1 Q. Okay. And by that you wanted to be able
2 to teach your students this broader view about
3 evolution that you just talked about. Is that right?

4 A. That would be correct.

5 Q. And part of that broad view would be
6 evidence that supports evolution, correct?

7 A. Okay.

8 Q. You have to say "yes."

9 A. I'm sorry. Yes.

10 Q. And part of it would be evidence that
11 refutes evolution, correct?

12 A. That would be correct, yes.

13 Q. And by way of this, I know it didn't get
14 approved, by way of this proposal you wanted kids to
15 learn not just Darwinian evolution theory, but other
16 theories that talk about how life on earth was
17 created; is that fair?

18 A. No. I don't believe what you said is a
19 fair assessment. If you can repeat that over.

20 Q. When you put this proposal together, what
21 did you understand the evidence against evolution to
22 be?

23 A. Sir, I'm just, again, I just wanted a
24 more robust -- I just wanted to teach -- I guess

1 you're confused with the word "against."

2 Q. Well, it's your word.

3 A. Yeah, I know, but you're using it -- it's
4 evidence out there and also some evidence that, I'm
5 trying to think of another way for against.

6 That's -- it is what it is there, sir.

7 Q. Right. You used the word "against,"
8 correct?

9 A. Yeah.

10 Q. Okay. And there was evidence out there
11 against the theory of evolution, correct? At the
12 time you put this proposal together.

13 A. There's some evidence out there that
14 would call into question evolution, yes.

15 Q. And what is that evidence?

16 A. At this time I'm not sure what I was --
17 it's been how many years? It's been six years, sir,
18 since I put this together. I'm not sure what I was
19 thinking there when I said "against." It's been six
20 years.

21 Q. Okay. In this proposal you used the word
22 "controversial" a number of places, right?

23 A. Yes.

24 Q. Okay. And the controversy over teaching

234

1 Darwinian evolution theory is that there's also this
2 theory of creationism out there that can teach us
3 about changes in man and changes in life, correct?

4 A. Yes, but that's not what I'm trying to --
5 you're going down the wrong road there, sir.

6 Q. Well, you tell me. What were the --

7 A. This has, again, this had nothing to do
8 with teaching creationism or intelligent design. If
9 you flip to the next page, I think it's very clear,
10 that's why I, you know, there's my proposal there.

11 Let me see where it's located there.

12 (A) where it says "Encourage the
13 presentation of scientific evidence regarding the
14 origin of life and its diversity objectively without
15 religious, naturalistic, philosophical biases and
16 assumptions."

17 There's nothing religious about this,
18 sir. You just brought the word "creationism" in
19 there and this has nothing to do with that. You did
20 the same thing that Dr. Weston did to me.

21 Q. Okay. Let me ask you --

22 A. So --

23 Q. All right. You pointed us to paragraph
24 (A) on page 2 of your proposal. (A), (B), and (C),

1 you didn't actually -- those aren't your words,
2 correct?

3 A. No, those are not.

4 Q. Right. You obtained that from this
5 website that's stated up there above, correct?

6 A. No, I did not receive it from that
7 website, sir.

8 Q. What website, well, it says "This
9 statement and the policy itself copied from
10 www.IntelligentDesignNetwork.org/TeachingResources."
11 Do you see that?

12 A. Yeah, up above that. It might have been
13 from that -- yeah, I would take it that's where I got
14 it from. Yes.

15 Q. That's fair. You went to that website,
16 you got this, and that's sort of a model resolution
17 to be used to try to get a school district to adopt a
18 policy to teach Darwinian evolution objectively; is
19 that fair?

20 A. That was a lot. Can you repeat that,
21 sir?

22 MR. MANSFIELD: Why don't you reread
23 that, please.

24 (Record read.)

236

1 A. Yeah, I would say yes to that.

2 Q. And part (C) of that resolution there on
3 the second page of your proposal talks about
4 encouraging the development of a curriculum that
5 helps students think critically about the claims of
6 evolutionary theory. Do you see that?

7 A. Yes, sir.

8 Q. It also wants the school to be able -- to
9 have teachers be able to teach students to understand
10 the full range of scientific views that exist
11 regarding the origins of life and its diversity,
12 right?

13 A. Yes.

14 Q. Okay. And finally in that paragraph (C),
15 to have teachers and students understand why origins
16 science may generate controversy. Do you see that?

17 A. Yes, sir.

18 Q. Okay. Now, when you put this together,
19 you understood what the controversy was out there on
20 teaching Darwinian evolution, right?

21 A. Can you repeat that, sir?

22 Q. When you put this proposal together, you
23 understood what the controversy was with regard to
24 teaching Darwinian evolution objectively.

1 A. I apologize, sir. Can you say that one
2 more time.

3 MR. MANSFIELD: Can you read it, please.

4 (Record read.)

5 A. I understood the controversy. I just
6 wanted a more robust --

7 Q. That's not my --

8 A. There was confusion -- there was
9 confusion in the building with how to -- teachers,
10 some taught it, some didn't teach it, and just like
11 you said a little bit earlier, if they don't teach
12 it, they're going to be lacking up above.

13 Q. Some taught what? Some did not teach
14 what?

15 A. If some teachers didn't teach evolution,
16 that example I think you gave me as an example, if
17 you don't teach evolution, you will be missing, okay.
18 And there was that type of -- I could see that type
19 of confusion within the school building, okay. So I
20 took it upon myself to try to alleviate that -- the
21 confusion of teachers.

22 Q. What was the confusion of the teachers?

23 A. In teaching evolution or not teaching
24 evolution and a broader -- and they would look at it

1 more, like I said, robustly.

2 Q. So you're saying teachers in the Mount
3 Vernon Middle School were confused about whether they
4 could or could not teach evolution?

5 A. There's a lot -- not with -- in how they
6 taught it, because kids would ask questions all the
7 time.

8 Q. Okay.

9 A. Okay.

10 Q. Evolution is --

11 A. Refute it, yes.

12 Q. Evolution specifically in the curriculum,
13 we talked about that before, correct?

14 A. Yes.

15 Q. So teachers understand they're allowed to
16 teach evolution.

17 A. I'll give you an example.

18 Q. Well, no. Answer my question.

19 A. I'm just trying to be -- I'm sorry,
20 because I'm sitting here thinking of an example. I
21 can help you understand that.

22 Q. Answer my question first.

23 A. I'm sorry. Go ahead, sir.

24 MR. MANSFIELD: Could you repeat my

1 question.

2 (Record read.)

3 A. Yes. Oh, yes.

4 Q. Okay. And what you're telling me is that
5 teachers were confused, I guess, about whether
6 they're allowed to talk about alternative theories
7 regarding evolution or not as part of teaching
8 evolution to kids in school.

9 A. The aspect that it comes up, if students
10 bring up these things, how do I deal with it.

11 Q. Okay.

12 A. How do I deal with it when someone's
13 refuting evolution? How do I -- so there was a lot
14 of squirming by teachers and some of them, I know of
15 one that didn't even -- didn't teach it, okay?

16 Q. Does that --

17 A. Because of that type of confusion. They
18 chose not to teach it. So that group of kids missed
19 all of evolution.

20 Q. Okay. Does it say anywhere here in this
21 proposal that this is designed to address the
22 confusion among teachers about what they're allowed
23 and not allowed to teach regarding evolution?

24 A. I was thinking of the first part, the

240

1 problem. Yeah, right there, sir. Can I read it?

2 Q. Point me to where you are.

3 A. First paragraph. First paragraph.

4 Q. Okay. But that's not what that says, is
5 it? What that says is there's confusion amongst some
6 MVCS science teachers over whether they're even
7 allowed to encourage critical scientific thinking on
8 evolution, right?

9 A. Even though it's considered excellent --
10 okay. Okay, your question again, sir?

11 Q. We can dance around this bush all day
12 long. What you wanted by way of this proposal is to
13 be able to teach alternative theories to evolution;
14 am I wrong or right?

15 A. If you're referring to creationism and
16 intelligent design, you're wrong.

17 Q. You tell me what you're referring to.
18 But you wanted to be able to teach kids, as part of
19 critical thinking about evolution, that there are
20 other theories out there, whatever they are, I don't
21 care what they are, that there are other theories out
22 there that explain life on earth, right?

23 A. Yeah, those things come up, to be able to
24 speak about them and talk about them. And --

1 Q. And analyze them.

2 A. Yes.

3 Q. Right?

4 A. Yes.

5 Q. And so you could analyze these
6 alternative theories, right?

7 A. Uh-huh.

8 Q. Is that right? You have to say "yes."

9 A. Repeat your question again, sir.

10 Q. You have to analyze these alternative
11 theories. That's part of what you want to do,
12 critically analyze --

13 A. Yes.

14 Q. -- these alternative theories, right?

15 A. Yes.

16 Q. Okay. And so it's looking at evolution
17 and looking at what supports evolution, right?

18 A. Yes.

19 Q. And likewise, it's looking at evolution
20 and looking at what refutes evolution, right?

21 A. Yes.

22 Q. Okay. Now, when you put this proposal
23 together, you told us a minute ago that you went to
24 this website to get this model proposal, correct?

1 A. That would be correct.

2 Q. And it looks like you got some other
3 information that's contained in your proposal here
4 from this same website; is that correct?

5 A. Can you point that out to me, sir?

6 Q. The first page, down at the bottom you've
7 got another cite to that same website.

8 A. No, that was just a -- that was put on
9 for them to -- if they wanted more information. I
10 don't think that's a slice off, I think that if you
11 want -- let me read the question. Let me read it
12 very quickly here, sir.

13 That could be, sir.

14 Q. Okay. Now, in putting this together you
15 obviously went to the Intelligent Design Network to
16 get information, right?

17 A. I would assume that would be correct,
18 sir, yes.

19 Q. And I'm assuming when you went to that
20 website, that you learned something about intelligent
21 design; is that fair?

22 A. You're assuming that I went in there and
23 studied and went through everything in there. No,
24 sir, I didn't go through there. I spent a --

1 Q. How long do you recall staying on that
2 website?

3 A. I don't remember, sir.

4 Q. More than ten minutes?

5 A. I don't remember, sir.

6 Q. And have you been to that website since
7 that point in time?

8 A. I don't know, sir. I don't know, sir.

9 Q. In here you write that -- you used the
10 phrase "controversial theories such as evolution."

11 What did you mean by that?

12 A. Pinpoint that for me, sir.

13 Q. First page, second-to-last paragraph from
14 the bottom.

15 A. Okay. And again, repeat the question.

16 Q. In this proposal you use the term
17 "controversial theories such as evolution." What did
18 you mean by that?

19 A. Looks like I cut and pasted, sir. I
20 don't remember what I -- "Fifty-two Ohio scientists
21 signed a press release on March 20, 2002 affirming
22 that students should be permitted to learn scientific
23 evidence both for and against controversial
24 theories." So this statement, 52 Ohio scientists

1 think it's wise to be able to critically analyze
2 evolution.

3 Q. Okay.

4 A. That's a controversial theory.

5 Q. What did you mean there by your use of
6 the words "controversial theories such as evolution"?

7 A. I remember getting those 52 Ohio
8 scientists' names and I -- I remember passing that
9 out. I do recall that.

10 Q. Passing it out to whom?

11 A. To this meeting. I think I'd have to --
12 this meeting.

13 Q. You still haven't answered my question.
14 What did you mean there by "controversial theories
15 such as evolution"?

16 A. That there's controversial theories.

17 Q. Okay. And evolution in some realms is a
18 controversial theory, right?

19 A. To some people, yes, it is.

20 Q. Okay. And to those people, creationists
21 for example, they consider evolution to be
22 controversial, right?

23 A. I've told you I'm a creationist.

24 Q. I'm not asking about you. I'm just

245

1 asking about those who believe in creationism
2 generally don't believe in evolution, correct?

3 A. I would disagree with that, sir.

4 Q. Okay. Many people who believe in
5 creationism consider evolution to be a controversial
6 theory, right?

7 A. Repeat that again.

8 (Record read.)

9 A. I'd say no to that.

10 Q. What's controversial about evolution?

11 A. I guess it would be the origin of life.

12 Q. Some people don't believe in Darwin's
13 theory that life evolved over time the way Darwin has
14 postulated; is that right?

15 A. No; that's not what I'm saying. The
16 origins of life. The beginning of life.

17 Q. Okay. So some people believe in the
18 biblical origins of life and some people believe in
19 Darwinian explanations about the origins of life; is
20 that fair?

21 A. I don't know if Darwin had a, I mean, he
22 did no -- I don't think he explained the origins of
23 life.

24 Q. Okay. What do you understand the

1 controversy about evolution to be?

2 A. I think I just stated, the origins of
3 life.

4 Q. Okay. In what respect?

5 A. Repeat that question, sir.

6 THE WITNESS: Ma'am, I'm sorry.

7 (Record read.)

8 A. I don't have an opinion on that. I'm not
9 sure what you're asking on that, sir.

10 Q. You understood there was a controversy
11 when you put this proposal together. You understood
12 there was a controversy about evolution, right? Yes?

13 A. Yes.

14 Q. Okay. And what did you understand that
15 controversy to be?

16 A. I've already hit that; it's the origins
17 of life.

18 Q. And when you say "origins of life," what
19 do you mean by that?

20 A. The first beginning of life.

21 Q. That people have different views about
22 how life began? Is this right?

23 A. People have different views on how life
24 began. Yes.

1 Q. Okay. Do you know Barry Sheets?

2 A. I don't remember that name, sir.

3 Q. That name doesn't ring a bell to you?

4 A. I don't know -- I don't remember that
5 name, sir.

6 Q. You testified in the administrative
7 hearing that you thought that you found out about
8 this intelligent design website from a man named
9 Barry Sheets.

10 A. I might have, sir.

11 Q. And who was he?

12 A. The name I remember. I haven't had
13 contact with him since then, so I don't --

14 Q. Who was he at the time? What did he do?

15 A. I can't give you -- I don't know, sir. I
16 don't remember.

17 Q. Was he somebody in Mount Vernon?

18 A. No. No, sir.

19 Q. How did you know him at the time?

20 A. Maybe from Evy Oxenford.

21 Q. Now, I think you talked about before --

22 MR. HAMILTON: Do you need a break?

23 THE WITNESS: Thank you.

24 MR. MANSFIELD: Do you need a break?

1 THE WITNESS: I was just getting ready to
2 make a statement. Is that okay, sir?

3 MR. MANSFIELD: Yeah.

4 (Recess taken, 4:16 to 4:28 p.m.)

5 Q. Mr. Freshwater, you talked about before
6 how before '06, 2006, you were allowed to critically
7 analyze evolution with students in class. Do you
8 recall that testimony?

9 A. Yes.

10 Q. Okay. So over the years in your science
11 class you've done exercises with kids to critically
12 analyze evolution, correct?

13 A. Exercises.

14 Q. What's that?

15 A. Exercises?

16 Q. Up until 2006 anyway, you taught critical
17 analysis of evolution to your science students.

18 A. No. 2003 when the proposal was not
19 approved.

20 Q. You told me earlier today, you testified
21 that up until 2006 critical analysis of evolution was
22 allowed somehow. Was that not the right --

23 A. At the tenth grade standard, but my
24 proposal did not pass in 2003.

1 Q. Did you teach critical analysis of
2 evolution to your students at any time?

3 A. Prior to 2003.

4 Q. Okay. So prior to --

5 A. Yeah.

6 Q. Okay.

7 A. You understand what I'm saying on that?

8 Q. Yeah. So prior to 2003 you did teach
9 critical analysis of evolution to your kids.

10 A. Yeah, I was -- Dr. Weston sent a memo
11 out, I'll say in 1997 I think it is, that I could
12 teach evolution.

13 Q. Did you ever talk to your eighth grade
14 science class during the sections when you were
15 talking about dinosaurs, did you ever tell them that
16 Tyrannosaurus rex did not have deep enough teeth to
17 be a carnivore?

18 A. There was -- when we -- what year was
19 that, again?

20 Q. You were asked a question at the hearing
21 did you teach your students that the Tyrannosaurus
22 rex did not have deep enough teeth to be a carnivore.

23 A. Yeah, there's some evidence out there of
24 that. Yes.

250

1 Q. And so that's something you taught to
2 your students, correct?

3 A. When we were doing the fossils.

4 Q. Okay.

5 A. I didn't state it as a scientific fact.

6 Q. And you told your students at one point
7 that dinosaurs and man walked the earth at the same
8 time, correct?

9 MR. DESCHLER: What time frame are we
10 talking about here, Doug?

11 MR. MANSFIELD: Any time.

12 MR. DESCHLER: Okay.

13 A. Repeat that again, sir.

14 Q. You told your students that dinosaurs and
15 man walked the earth at the same time.

16 A. The scientific evidence out there with --
17 the scientific evidence out there that there's a --
18 that dinosaurs are -- extinct 16 million years ago
19 and man on earth 1 million years ago.

20 Q. Okay. That's not my question. My
21 question is did you ever indicate to your students
22 that dinosaurs and man walked the earth at the same
23 time?

24 A. There's a --